IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5403 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LODRA DOODH UTPADAK SAHKARI MANDLI - Petitioner(s)
Versus
BHIKHABHAI JOITARAM PATEL - Respondent(s)

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Appearance :
MR RC JANI for Petitioner,
MR IM PANDYA for Respondent,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/08/2007

ORAL JUDGMENT

1. Heard Mr.R.C. Jani, learned counsel for the petitioner and Mr.I.M.Pandya, learned counsel for the respondent.

2. The workman, after he was removed from services, came to the Labour Court, Kalol in Reference (LCK) No.1 of 1986 with a submission that without observing the principles of natural justice or even without issuing a notice to show cause or without making any inquiry into the guilt or his conduct, he was illegally removed from services. The present petitioner – employer filed reply submitting inter-alia that the workman was indulged in nefarious activities like misappropriation and dealing in India made foreign liquor which was prohibited item in the State. They also submitted that on an earlier occasion, notice was issued and a reply was sought from the workman and as the workman did not give any satisfactory reply, the services of the workman could legally be terminated.

3. The learned trial court made the award on 28/7/1994 in favour of the workman holding that the workman was terminated from the service illegally, no inquiry was made into his conduct and present petitioner did not produce any documentary evidence before the court that any inquiry was made into his conduct.

4. Being aggrieved by the said award, present petitioner filed review application in the said reference case and

submitted that the court below was unjustified in not relying upon Exh.25 from which it would well be spelled out that due and proper notices were given and appropriate action was taken and only after following the legal provisions, the respondent came to be terminated.

5. The Labour Court rejected the said review application on 18/5/1999, the petitioner is now before this Court under Article 227 of the Constitution of India.

6. After taking me through the findings recorded by the learned court below and the documents marked at Annexure-D collectively, Mr.Jani, learned counsel for the petitioner submitted that a show cause notice was given on 26/4/1986 wherein allegations relating to misappropriation or breach of trust were made and only thereafter the workman came to be removed from the services vide order dtd.8/7/1984. He submitted that not only at this time, but even on earlier occasions, the workman was found engaged in misappropriation and other illegal activities.

7. Mr.Pandya, learned counsel for the respondent, on the other hand submitted that the court below was justified in recording the findings in favour of the workman and it is also proved on the records that no notice to show cause

was issued, no inquiry was made and the workman came to be removed from the services just on the basis of an ordinary letter.

8. Though Mr.Jani, learned counsel for the petitioner vehemently contended that in view of the admissions made by the workman, an inquiry was not necessary, but, I am unable to hold that there was any admission made by the respondent that he committed defalcation or misappropriation. The only admission made by the workman was that certain articles were sold by him, money was not deposited right in time and after finding that the money was required to be deposited, he immediately deposited the money and made a submission that this was a lapse on his part. When a qualified submission is made by somebody, then, it cannot be taken to be unqualified admission of guilt. In the present matter, even after such letter, no departmental inquiry was made. Notice issued to the petitioner only said that if the petitioner does not file any reply to the notice dtd.26/4/1984, legal action would be taken against the interest of the workman. The only legal action could be, in the opinion of this Court, to issue a chargesheet, call for an explanation, hold an inquiry and

thereafter record a finding into the guilt or innocence of the workman. In the present case, short-circuiting the process known to law, the present petitioner illegally retrenched the workman.

9. So far as the question of workman's involvement in prohibition case is concerned, the court below has found that though a chargsheet was filed before a competent court, but the workman was acquitted of the charges. If both the foundations, on which the workman came to be terminated, become nonest, then, the order of termination would fall. The order of termination cannot be held to be valid.

10. It was then contended by Mr.Jani, learned counsel for the petitioner that looking to the nature of the dispute and nature of the allegations, the court below was unjustified in awarding 100% back wages in the present matter.

11. Mr.Pandya, learned counsel for the respondent, however, submitted that as the workman was illegally terminated , 100% back wages should follow the order of reinstatement.

12. In the opinion of this Court, though the order of termination is held to be illegal, but it cannot be said that there was no reason for the institution / employer not to

take an action against the present workman.

13. Taking into consideration the totality of the circumstances and that the order of termination is being quashed on a technical ground, I hold that the workman would be entitled to 50% back wages from the date of termination till the date of award.

14. Except interference on the question of back wages, on the merits I refuse to interfere. The petition accordingly stands disposed of. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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